

NTSB Order No. EA-4827

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 25th day of February, 2000

Respondent.

Docket SE-15390

The respondent has appealed *pro se*, from a decisional order of Administrative Law Judge Patrick J. Geraghty, issued on December 17, 1998, in which the law judge granted the Administrator's motion for summary judgment in this proceeding.¹ By that decision, the law judge affirmed the suspension of respondent's private pilot certificate for 180 days, based on allegations of violations of FAR §§ 91.123(a), 61.3(c)(1),

¹A copy of the law judge's order is attached.

61.56(c), and 91.13(a).² The Administrator's order alleged in pertinent part as follows:

2. On or about November 12, 1997, you operated as pilot in

²Sections 91.123(a), 61.3(c)(1), 61.56(c), and 91.13(a) of the Federal Aviation Regulations (FAR), 14 CFR Parts 61 and 91, provide in pertinent part as follows:

§ 91.123 Compliance with ATC clearances and instructions.

(a) When an ATC clearance has been obtained, no pilot in command may deviate from that clearance unless an amended clearance is obtained, an emergency exists, or the deviation is in response to a traffic alert and collision avoidance system resolution advisory....

§ 61.3 Requirement for certificates, ratings, and authorizations....

(c) *Medical certificate.* (1) Except as provided for in paragraph (c)(2) of this section, a person may not act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft, under a certificate issued to that person under this part, unless that person has a current and appropriate medical certificate that has been issued under part 67 of this chapter, or other documentation acceptable to the Administrator, which is in that person's physical possession or readily accessible in the aircraft.

§ 61.56 Flight Review....

(c) Except as provided in paragraphs (d) and (e) of this section, no person may act as pilot in command of an aircraft unless, since the beginning of the 24th calendar month before the month in which that pilot acts as pilot in command, that person has:

(1) Accomplished a flight review given in an aircraft for which the pilot is rated by an authorized instructor and

(2) A logbook endorsed from an authorized instructor who gave the review certifying that the person has satisfactorily completed the review.

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

command civil aircraft N5511M, an Aero Commander, Model 200D, on a flight with a landing at John Wayne/Orange County Airport, Santa Ana, California.

3. Incident to said operation at the John Wayne/Orange County Airport, Air Traffic Control (ATC) issued you a clearance to land on runway one-nine left.

4. You acknowledged and read back the said instruction.

5. Without receiving an amended instruction and when no emergency existed, you deviated from the said clearance by landing on an active taxiway.

6. Your operation of civil aircraft N5511M, in the manner and circumstances described above, was careless or reckless so as to endanger the life or property of another.

In addition to the incident described above, respondent lacked a current airman medical certificate, his last airman medical certificate having been issued in 1991, and he had not had a FAR 61.56 flight review since 1993. Respondent's logbook also reflected that he had operated the same aircraft as pilot in command on two other occasions, both in 1995.

Respondent filed an answer to the Administrator's order, which was filed as the complaint in this proceeding. Respondent admitted all of the factual allegations, but denied that his conduct was careless or reckless. In the Administrator's motion for summary judgment, she asserted that landing on a taxiway contrary to an ATC clearance, and operating an aircraft as pilot in command without a current airman medical certificate and without having accomplished a biennial flight review, were all *per se* careless or reckless operations of an aircraft. The Administrator also asserted that the sanction ordered was reasonable and within the Sanction Guidance Table, citing FAA

Order 2150.3A, Appendix 4, and its provision for sanctions ranging from 30 to 180 days for each of the alleged FAR violations.

The law judge, finding that there were no factual disputes to be resolved and noting that Board precedent supports a finding of carelessness where the potential for endangerment was created by an operational violation, affirmed the Administrator's allegations.³ And, also relying on unspecified Board precedent, the law judge found that the 180-day suspension ordered by the Administrator should be affirmed. The only question before us in this appeal is whether the law judge's resolution of this matter by way of summary judgment was appropriate under the circumstances. We think it was.

Respondent does not dispute that, contrary to his ATC clearance to land on runway one-nine left, he landed on an active taxiway at John Wayne Airport. He argues, however, that this mistake was not careless because no other aircraft were on the active taxiway. We disagree. Landing on an active taxiway is inherently dangerous. Administrator v. Brandano, 3 NTSB 1823, 1826 (1979). The fact that no other aircraft were on the taxiway at the time of respondent's landing was merely fortuitous. The potential for endangerment to other persons or property is sufficient to support the finding of a violation of FAR § 91.13(a). Administrator v. Szabo, NTSB Order No. EA-4265 (1994),

³It is apparent from respondent's appeal brief that he is unaware that the law judge affirmed a finding of careless, not reckless, conduct.

citing Administrator v. Haines, 1 NTSB 769 (1970), *aff'd Haines v. DOT*, 449 F.2d 1073 (DC Cir. 1971). See also *Administrator v. Harris*, NTSB Order No. EA 4475 (1996). Nor do we take lightly the fact that respondent "inadvertently" permitted his airman medical certificate to expire for more than seven years, or that he had failed to meet the requirements for biennial flight review for several years. Respondent's disregard for the Administrator's regulations is clear.

Turning to the sanction issue, the Administrator supported her order of a 180-day suspension by reference in her motion for summary judgment to her Sanction Guidance Table. Where the Administrator establishes before the law judge the existence of validly adopted written policy guidelines, the law judge must impose a sanction that falls within the range of sanctions suggested therein, unless he finds that application of the guidelines by the Administrator to be arbitrary, capricious, or not in accordance with law. *Administrator v. Peacon*, NTSB Order No. EA-4607 at 4 (1997). Since, under the circumstances described herein, a 180-day suspension does not seem inappropriate, see e.g., *Administrator v. Marcussen*, NTSB Order EA-4711 (1998) (180-day suspension upheld for pilot with no aircraft rating and no biennial review, whose operation of an aircraft with passengers ended in a gear-up landing), the law judge appropriately deferred to the Administrator's order on sanction and did not abuse his discretion by granting summary judgment.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's order is affirmed; and
3. The 180-day suspension of respondent's private pilot certificate shall begin 30 days from the service date indicated on this opinion and order.⁴

HALL, Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁴For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(f).